

Legislation Eliminating Improper Preferences for Alaska Native Corporations

The Small Business Administration's 8(a) program was created to help small businesses compete during the early stages of development. It was later expanded to help socially and economically disadvantaged individuals and groups successfully compete in the federal marketplace. This is a meritorious program as originally intended. However, Alaska Native Corporations (ANCs) have received significant advantages within the 8(a) program that other 8(a) participants do not. These advantages, coupled with a lack of oversight from the Small Business Administration (SBA) and other federal agencies, have resulted in widespread abuses of the 8(a) program.

On July 16, 2009, the Subcommittee on Contracting Oversight held a hearing on contracting preferences for ANCs. This was the culmination of a several month long investigation by the Subcommittee, which examined several thousand pages of documents submitted by ANCs in response to Subcommittee requests. The investigation found:

- Between 2000 and 2008, ANCs received \$6.6 billion in 8(a) sole-source contracts valued at more than \$3.5 million each, the maximum value of sole-source contracts permitted for non-Native 8(a) companies;
- Over the last 9 years, the 19 companies surveyed by the Subcommittee have enrolled 248 subsidiaries, joint ventures, or partnerships in the 8(a) program;
- On average, nearly 95% of ANC employees are not ANC shareholders. Of the 13 corporations which provided detailed information to the Subcommittee regarding executive compensation for non-Native executives, 69% of executive compensation was paid to individuals who were not shareholders in the Native Corporations; and
- Of the more than \$23 billion in federal contracts that ANCs have received over the last nine years, the corporations have provided benefits (including cash, scholarships, and the preservation of cultural heritage) to shareholders totaling an average of approximately \$615 per person per year.

New information reported by the Washington Post raises concerns about whether potential statutory and regulatory violations by ANCs have become widespread, at a cost to both the taxpayer and the Alaska Natives these corporations purport to benefit. For example, the Post reported that in 2000, NJVC, a joint venture between Chenega Technology Services Corporation and Arctic Slope Regional Communications Corporation, was formed "with 30 employees and little technology expertise [and the] next year, it received a 15-year contract worth up to \$2.2 billion to help manage ... the government's main spy satellite program." Last year another ANC, Sitnasuak Native Corporation, "earned after-tax profits of \$14.5 million on revenue of \$212 million ... paid ... \$305 apiece [to Sitnasuak's 2,238 shareholders, and] ... \$6.4 million" to a non-Native consultant for the corporation.

Legislation is needed to put ANCs on the same footing as other 8(a) participants by eliminating the preferences for ANCs who chose to participate in the 8(a) program. Congress

must remedy SBA's failure to manage and oversee existing program requirements and restore fair competition in the program. This legislation will:

- Eliminate the ability of ANCs to receive sole-source contracts exceeding the caps applicable for other 8(a) participants of \$3.5 million for services or \$5.5 million for goods;
- Eliminate the automatic designation of ANCs as socially disadvantaged business enterprises, requiring ANCs to demonstrate their social disadvantage by providing evidence of "racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups;
- Eliminate the automatic designation of ANCs as economically disadvantaged, requiring any ANC seeking to participate in the 8(a) program to demonstrate that corporation's economic disadvantage upon entering the program;
- Require ANCs to count all affiliates and subsidiaries in size determinations for 8(a) eligibility, which shall be limited to no longer than nine years, as is required for other 8(a) participants;
- Require ANCs who chose to participate in the 8(a) program to own a majority interest in only one 8(a) subsidiary at any one time;
- Require ANCs who chose to participate in the 8(a) program to be managed by individuals who qualify as socially and economically disadvantaged under the program, as other 8(a) participants must do; and
- Prohibit ANCs who chose to participate in the 8(a) program from operating as pass-throughs to non-Native companies that do not qualify under the 8(a) program.